

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT GENE REGA,	)	
	)	
Plaintiff,	)	Civil Action No. 08-156
	)	
v.	)	
	)	Magistrate Judge Caiazza
JEFFREY A. BEARD, <i>et al.</i> ,	)	
	)	
Defendants.	)	

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

I. RECOMMENDATION

It is respectfully recommended that the Plaintiff's Motion for a Preliminary Injunction (Doc. 8) be denied.

II. REPORT

The Plaintiff, Robert Gene Rega ("Rega" or "the Plaintiff"), is a state prisoner who has filed a civil rights action pursuant to the provisions of 42 U.S.C. §1983. Rega alleges in his Complaint that he was assaulted by another inmate on March 31, 2007, and that this occurred because a staff member at the State Correctional Institution at Greene ("SCI-Greene") opened his cell door by remote control, without his knowledge. Rega also alleges that he was denied medical treatment after the assault.

The Plaintiff has filed a Motion for a Preliminary Injunction (Doc. 8) in which he describes the security measures in place at SCI-Greene, and in which he asserts that additional security is necessary. He seeks an order of this Court directing

that additional security measures be implemented by state officials to prevent any further assaults.<sup>1</sup>

In determining whether a preliminary injunction is warranted, a court must consider: (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably harmed by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest. Bieros v. Nicola, 857 F. Supp. 445 (E. D. Pa.1994). It "frequently is observed that a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." Mazurek v. Armstrong, 520 U.S. 968, 972 (1997) (emphasis deleted).

With respect to the "irreparable harm" prong, the Court of Appeals for the Third Circuit has emphasized that the "key aspect of this prerequisite is proof that the feared injury is irreparable; mere injury, even if serious or substantial, is not sufficient." United States v. Commonwealth of Pennsylvania, 533 F.2d 107, 110 (3d Cir.1976). Additionally, "a showing of

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<sup>1</sup> Rega has noted that one of his exhibits, a motion for temporary restraining order filed in a state court proceeding, was erroneously docketed here as a motion (Doc. 7). That error has been corrected in that the motion has been terminated. The exhibit is part of the record and will be considered by the court when relevant.

irreparable harm is insufficient if the harm will occur only in the indefinite future. Rather, the moving party must make a clear showing of *immediate* irreparable harm." Campbell Soup Co. v. Conagra, 977 F.2d 86, 91 (3d Cir. 1992) (internal quotations omitted, emphasis added); Adams v. Freedom Forge Corp., 204 F.3d 475, 488 (3d Cir.2000) (harm may not be speculative).

Here, Rega has provided no evidence which would support a finding that he is in danger of immediate harm. In fact, his only allegation is that he was assaulted almost one year ago. This occurrence is a single alleged incident, and took place in March, 2007. There are no other allegations of injury - save Rega's general assertion that he *may* be assaulted again. In sum, Rega has not alleged a likelihood of *immediate* and irreparable harm. That said, Rega is not entitled to injunctive relief.

### **III. CONCLUSION**

It is recommended that the Plaintiff's Motion for a Preliminary Injunction (Doc. 8) be denied.

In accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.1.4 (B) of the Local Rules for Magistrates, objections to this Report and Recommendation are due by March 12, 2008.

s/ Francis X. Caiazza  
Francis X. Caiazza  
United States Magistrate Judge

February 25, 2008

cc:

ROBERT GENE REGA

FA 4771

S.C.I. at Greene

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Wayneburg, PA 15370